

## REMARKS

Claims 16-28 and 31 are pending in this Application. Applicant respectfully thanks the Examiner for indicating the Allowable Subject Matter of claims 22, 23, and 28. The Examiner's rejections will now be respectfully addressed in turn.

### Rejections under 35 U.S.C. §102(b)

Claims 1, 17, 21, and 24 have been rejected under 35 U.S.C. §102(b) as being anticipated by Japanese Publication No. 2004201187 to Akamine ("Akamine" hereinafter). Applicant respectfully traverses this rejection.

Under 35 U.S.C. §102(b) "A person shall be entitled to a patent unless –  
"the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

Akamine was not published in English until June 24, 2004. Applicant filed a PCT Application designating the U.S. and in English on October 10, 2003. As such, Applicant has an earliest priority date of October 10, 2003, which is *actually after* Akamine's date of June 24, 2004. For at least this reason, Applicant respectfully submits that Akamine does not qualify as prior art under 35 U.S.C. §102(b).

With regards to 35 U.S.C. §102(e), "A person shall be entitled to a patent unless –  
the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language."

Furthermore, under MPEP 706.02(f)(1) D,

**“Foreign applications’ filing dates that are claimed (via 35 U.S.C. 119(a)-(d), (f), or 365(a) or (b)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes.** This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a) or (b).” (emphasis added).

As is established in the 102(b) discussion above, Applicant’s earliest priority date is the PCT filing date of October 10, 2003. As such, this is Applicant’s relevant date for determining priority under 102(e). Though Akamine has a *Japanese* filing date of December 20 2002 (to which the corresponding Akamine U.S. Publication 20040121746 claims priority), this date does not qualify as the 102(e) date for Akamine. This is because, according to MPEP 706.02(f)(1) D (cited above) foreign applications’ filing dates that are claimed in applications **may not be used as 35 U.S.C. 102(e) dates for prior art purposes.** Accordingly, Akamine actually has a 102(e) date of December 5, 2003, which is the date Akamine was filed in the U.S. For at least this reason, Applicant respectfully submits that Akamine also does not qualify as prior art under 35 U.S.C. §102(e).

#### Rejections under 35 U.S.C. §103(a)

Claims 18-20, 25-27, and 31 have been rejected under 35 U.S.C. §103(a) as being obvious Akamine in view of United States Patent No. 5,974,089 to Tripathi (“Tripathi” hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d

1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant respectfully notes that Akamine does not qualify as 35 U.S.C. §102 prior art. As such, Akamine also does not qualify as art under 35 U.S.C. §103(a). Accordingly, for at least this reason, Applicant respectfully submits that claims 18-20, 25-27, and 31 are not obvious over Akamine in view of Tripathi.

Conclusion

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,

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Date: November 24, 2008